IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

INCOME TAX REFERENCE No 82 of 1995

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.SHAH Sd/-
and
Hon'ble MR.JUSTICE D.A.MEHTA Sd/-

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

COMMISSIONER OF INCOME TAX

Versus

NEW BHARAT ENGG. WORKS

Appearance:

MR MH JOSHI FOR MR MANISH R BHATT for Applicant.

NOTICE SERVED for Respondent No. 1

CORAM : MR.JUSTICE M.S.SHAH
and
MR.JUSTICE D.A.MEHTA

Date of decision: 07/11/2001

ORAL JUDGEMENT

(Per : MR.JUSTICE M.S.SHAH)

In this reference at the instance of the revenue, the following questions have been referred for our opinion in respect of assessment year 1984-85 :

1 "Whether, the Appellate Tribunal is right in law and on facts in holding that if the unpaid sales tax and provident fund liabilities are paid before the time stipulated for filing the return u/s.139(1), addition cannot be made invoking the provisions of sec.43B?"

2 "Whether, the Appellate Tribunal is right in law and on facts in confirming the order made by the CIT(A) whereby the ITO was directed to work out the deduction u/s.80I though no separate books of accounts were maintained for the new unit and the assessee had shown loss in the old unit ?"

3 "Whether, the Appellate Tribunal is right in law and facts in holding that disallowance under rule 6D was to be calculated with reference to all the tours made by the person during the previous year and not with reference to individual tours ?"

2 We have heard Mr.M.H.Joshi, learned Counsel for the revenue. Though served, none appears for the respondent-assessee.

3 As far as question No.1 is concerned, our attention is invited to the decision of the Apex Court in the case of Allied Motors, 224 ITR 677.

Following the said decision our answer to question No. 1 is in the affirmative i.e. in favour of the assessee and against the revenue.

4 As far as question No.2 is concerned, our attention is invited to the decision in Commissioner of Wealth Tax vs. Chander Sen, 161 I.T.R.370 and C.I.T. vs. J.K.Synthetics Ltd., 182 I.T.R.125.

Following the said decisions our answer to question No.2 is in the affirmative i.e. in favour of the assessee and against the revenue.

5 Coming to question No.3, the controversy raised therein came up for consideration of this Court in Income Tax Reference No. 54 of 1988, which came to be decided on 6/2/2001. After referring to the decisions of Andhra Pradesh and Punjab and Haryana High Courts in the case of CIT vs. Coromandel Fertilizers Ltd. (1996) 220 I.T.R.298 and in the case of C.I.T. vs. Porritts and Spencer (Asia) Ltd. 241 I.T.R. 126 respectively, this Court has held that all the tours undertaken by the employee during a year are not to be grouped together and that the limits laid down in Rule 6D have to be applied with reference to each trip of an individual employee.

Following the aforesaid decisions our answer to question No.3 is in the negative i.e. in favour of the revenue and against the assessee.

6 The reference stands disposed of accordingly with no order as to costs.

Sd/- Sd/-
(M.S.Shah,J) (D.A.Mehta,J)

m.m.bhatt